

Ben Cook - MDE's position on HB 4306

From: "Hansknecht, Lisa (MDE)" <HansknechtL@michigan.gov>
To: Amanda Price (AmandaPrice@house.mi.gov), <AmandaPrice@house.mi.gov>, "
Date: 3/15/2011 9:48 AM
Subject: MDE's position on HB 4306
CC: Bajema Derek (MDA), <BajemaD@house.mi.gov>

Honorable Members of the House Education Committee:

The Michigan Department of Education (MDE) is supportive of the concept of HB 4306 but the legislation has illuminated several issues about which you should be aware. In general MDE has been pushing districts to save money voluntarily through consolidation of services, and we appreciate the motive behind this bill in encouraging districts to look for opportunities to save money through competition. In order to assist you in reviewing the legislation, it is important to note that several issues have come to light related to this bill:

- 1) The bill appears contradictory to the intent of a law previously enacted (PA 315 of 2008) encouraging local farm-to-school procurement activities;
- 2) An overall State mandate raises Headlee issues; and
- 3) There are additional issues related to contracting food services due to additional federal requirements in that area.

Below is more detail on each of these issues.

1) Farm-to-School Issue:

It is likely that, given economies of scale, the companies to win bids under this legislation would be the larger foodservice management companies. And while that may result in savings in some instances, it should be noted that there is a potential downside that seems in conflict with the intent of a previously enacted law. The larger companies historically do such a large amount of business and contracts that they work predominantly with large scale providers such as Campbell's, Tyson, etc. They are less likely to work with local area farmers for a contract on local apples, for example. This could hamper and diminish efforts toward Farm-to-School activities that work to ensure fresh, local foods are provided to our students and that promote local agricultural business. In 2008, the Legislature passed legislation with strong support from both sides of the aisle and both chambers (99-7 House vote; unanimous passage in Senate) that was enacted on this same topic. House Bill 6368 (PA 315 of 2008) created the "Farm-to-School Procurement Act" to require the Michigan Department of Education (MDE) and the Michigan Department of Agriculture (MDA) to collaborate to encourage school food authorities to purchase local farm products. House Bill 4306 as before the committee would seem to be at cross-purposes with the previously enacted law.

2) Headlee Issue:

A State mandate requiring bidding likely will increase costs for districts as the districts must undertake a bidding process. Would this result in the State being subject to another costly lawsuit? Perhaps this is a question better suited for legislative legal counsel or the Attorney General's office.

3) Food Services Contract Issue:

For any school that participates in the National School Lunch Program (NSLP), the U.S. Department of Agriculture places additional requirements on those contracts and the process. There are some large cost increases that would result from the bill for MDE and local districts that participate in the NSLP (over 1000 schools) due to the requirements related to the federal program and oversight of that by MDE. An extensive process is required by USDA regulations for the procurement of foodservice contracts. Not all 1000 schools that participate are public schools, so some will not have to have contracts under this bill. However, each new contract by a public school within the NSLP is new work for both the Department and the district.

Bidding requires additional work by districts as well, and that added cost may be too much to be made up by any coinciding cost reduction from the competition. Note that while MDE can develop prototype contracts, each prototype generally would still be adjusted to accommodate the local needs of various districts. Some districts offer breakfasts; some add in after-school snacks; some have the summer food programs (not summer school). MDE must approve the changes from the prototype to the RFP. The entire process is labor intensive at the local and MDE level. Here is a link that describes the process districts and MDE must go through from the USDA:
<http://www.fns.usda.gov/cnd/guidance/FSMCguidance-sa.pdf>.

This cost could be mitigated some, resulting in a smaller increase in costs for the Department, if many districts go in together and form consortia, but even that still incurs a cost. Without consortia, MDE will have to approve hundreds more contracts, and, again, with or without consortia it is additional work for the local districts. This work takes hours of several peoples' time and includes many steps by MDE and the school over a several month period. For MDE, this will increase the work in the Grants Coordination and School Support office resulting in a need for additional staff to oversee/manage the increased number of Foodservice Management contracts (FSMC), as well as for developing a prototype contract. It is estimated that an additional 3-4 FTEs of consultant and clerical staff would be needed to support increased administrative responsibilities. When salary, benefits, Department of Technology, Management and Budget costs, materials, etc., are tallied the cost totals approximately \$350,000-\$400,000 annually.

To conclude, the inclusion of food services, especially, in this bill raises a number of issues about which you should be aware. Please feel free to contact me if you have any questions or are in need of additional information.

Sincerely,

Lisa

Lisa M. Hansknecht, Director
Office of State and Federal Relations
Michigan Department of Education

Follow the Michigan Department of Education on Facebook: